

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION**

**5:08cv30**

**INTEGON NATIONAL INSURANCE )  
COMPANY, )**

**Plaintiff, )**

**Vs. )**

**ORDER**

**LESTER BERRY; MICHAEL O. )  
LEAVITT, SECRETARY OF THE )  
UNITED STATES DEPARTMENT )  
OF HEALTH AND HUMAN )  
SERVICES; and CAROLINA )  
ORTHOPEDIC SPECIALISTS, )**

**Defendants. )**

**THIS MATTER** is before the court on the Secretary of the Department of Health and Human Services' Motion for Substitution. The Secretary seeks to be substituted as the real party in interest for Palmetto GBA, LLC, his contractor. While the Secretary is entitled to the relief he seeks as a matter of law because the Secretary is the real party in interest in any litigation involving the administration of the Medicare program, 42 C.F.R. § 421.5(b), the motion does not reflect that the Secretary of the Department of Health and Human Services' consulted with counsel for plaintiff. Local Civil Rule 7.1(B) provides in relevant part:

**(B) Requirement of Consultation.** Any motions other than for dismissal, summary judgment, or default judgment shall show that counsel have conferred or attempted to confer and have attempted in good faith to resolve areas of disagreement and set forth which issues remain unresolved. The requirement of consultation also applies to motions for extension of time and to motions for

continuance of a trial or other proceeding.

\* \* \*

LCvR 7.1(B)(emphasis added). Inasmuch as such omission was likely due to oversight, the request will be allowed with leave granted to plaintiff to seek reconsideration of such allowance for good cause shown.

### **ORDER**

**IT IS, THEREFORE, ORDERED** that the Secretary's Motion for Substitution (#2) is **ALLOWED**, Michael O. Leavitt, Secretary of the Department of Health and Human Services is **SUBSTITUTED** as the real party in interest for Palmetto GBA, LLC, and the Secretary is allowed 60 days from such substitution to Answer or otherwise respond to the Complaint.

Such substitution is reflected in the caption of this Order.

Signed: April 24, 2008



Dennis L. Howell  
United States Magistrate Judge

